IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 420 OF 2005

M/S MERCK INDIA LTD.,THROUGH ITS WORKS MANAGER, CARANZALEM GOA. ....Petitioner

Versus

STATE OF GOA THROUGH THE CHIEF SECRETARY AND 4 ORS., ...Respondents

Shri M.B. D'Costa, Sr. Advocate with Shri J. A. Lobo, Advocate for the Petitioner.
Shri S.S. Kantak, Advocate General with Ms. Gauri Bhonsule, Addl. Govt. Advocate for the Respondents.

Coram:- D. D. SINHA &
N. A. BRITTO, JJ.

Date:- 29th November, 2005

P.C.:

Heard Shri M.B. D'Costa, the learned Senior Counsel for the Petitioner and the learned Advocate General for the respondents.

2. In the present Writ Petition the petitioner is seeking directions to the respondents to cancel and withdraw the Notice dated 24.10.2005 issued by the Mamlatdar of Ponda under the recovery proceedings initiated for recovery of the amount of Rs. 18 lakhs required to be paid by the petitioner towards the water charges for the period from November, 2001 to September, 2002. It is brought to our notice that as per the contract entered into between the respondents and the petitioner for water supply, in the year 1983 the minimum consumption tax and meter rent per month was 1500 cubic meters and 1.75 cubic meters respectively. As per another contract for water supply entered into between the petitioner and the respondents in the year 1984 and as per Article 6 of the said contract the minimum consumption tax and meter rent per month is 3000 cubic

meters and 1.75 cubic meters respectively.

3. Mr. D'Costa, learned Senior Counsel on the basis of the above referred to Article 6 of the contract, by which the petitioner was entitled to get total minimum quantity of water per month of 4500 cubic meters. The learned Senior Counsel contended that though he did not get the minimum quantity of water referred to hereinabove, even then the respondents charged for the minimum quantity mentioned in the contract and therefore the act of the respondents to charge on the basis of minimum quantity of water stated in the above referred contract though not supplied, is not sustainable in law and therefore demand made on the basis of this aspect is also unsustainable in law.

4. Mr. D'Costa, the learned Senior Counsel further contended that in the year 2000 the petitioner has made an application to the respondents to reduce the minimum quantity of water since they were unable to supply the minimum quantity of water as per the contract entered into in 1983 and 1984. It is contended that inspite of the above referred request, for one reason or the other the respondents did not enter into a fresh contract for minimum quantity of water. It is contended that in the year 2002 the petitioner received a bill for Rs. 18 lakhs for water charges for the period 2001 to 2002 and the said demand is not on the basis of the minimum quantity of water required to be supplied to the petitioner by the respondents and therefore the petitioner from time to time made applications/requests to the respondents to consider this aspect. However, the respondents failed to do that and initiated proceedings under the Land Revenue Code for the purposes of recovery of the above referred amount of Rs. 18 lakhs. Consequently the Mamlatdar issued the impugned Notice and therefore the petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

5. The learned Advocate General, on the other hand, contended that as per the terms and conditions of the contract of 1983 and 1984, the consumer has to pay the minimum quantity of water mentioned in the

contract, irrespective of the fact as to whether the minimum quantity of water was supplied to the consumer or not. It is therefore submitted that since the petitioner agreed for this condition and signed the contract, he is estopped from canvassing his grievance in this regard, at such a belated stage when the demand of Rs. 18 lakhs was made in the year 2002 at the stage when he has avoided to pay the bill which is based on the terms and conditions of the contract for supply of water. The Advocate General further contended that the petition is filed almost after three years from the demand of Rs. 18 lakhs made by the respondent which is in the year 2002 and therefore the petition suffers from delay and laches and this Court may not show any indulgence.

6. The learned Advocate General categorically denied that the respondents avoided to enter into a fresh contract for the purpose of reducing the minimum consumption/supply of water. On the other hand, the respondents requested the petitioner to provide certain information and documents to enable the respondents to enter into a fresh contract of water supply. Though the information was given by the petitioner to the respondents, however by that time the petitioner stopped making the payment for water charges and therefore further steps in this regard to excecute fresh contract could not be taken. The learned Advocate General inview of the above referred circumstances contended that the petitioner is under contractual obligation to make the payment of Rs. 18 lakhs particularly when he has neither challenged the validity of Art.6 of the conditions of the contract and therefore this Court may not show any indulgence in the matter.

7. We have considered the contentions canvassed by the respective counsel. In the instant case the demand for Rs. 18 lakhs was made by the respondents in respect of the quantity of water supplied to the petitioner in the year 2002 and therefore normally we would not have shown any indulgence in the present petition which is moved after so many years and at a stage when the proceedings are initiated before the Mamlatdar for the purpose of recovery of the said amount under the provisions of the Land

Revenue Code. Prima facie, we are of the view that the petition suffers from delay and laches. Mr. D'Costa, the learned Senior Counsel howver placed reliance on a decision of the Supreme Court in the case of LIC of India and another v. Consumer Education & Research Centre and others (1995) 5 S.C.C. 482. Be that as it may, in view of the above referred facts, in our view, it will be appropriate for the petitioner to make acomprehensive representation to the Respondent No.1 in resepct of the grievances made by the petitioner in the present Writ Petition within a period of four weeks from today without prejudice to his rights and if such representation is made by the petitioner to the Respondent No.2, we direct respondent No.2 to decide the same on its own merit according to law and procedure applicable in this regard. We want to make it clear that the representation which the petitioner is at liberty to make as well as the decision which the respondent No.2 will take is without prejudice to their respective rights. We expect the respondent to take a decision on its own merit according to law on such representation as early as possible, and in any case not beyond the period of six weeks from the date of receipt of the said representation. In the meanwhile the Mamlatdar shall not proceed in the recovery proceedings till such time order is passed by the respondent No.2 on the application/representation of the petitioner.

With the above observations and directions, the Writ Petition is disposed of.

Duly authenticated copy be issued to the petitioner.

D. D. SINHA, J.

N. A. BRITTO, J.

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